

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 06, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROY OCHOA,

Defendant.

No. 2:19-CR-00194-SAB-1

ORDER GRANTING THE UNITED
STATES' MOTION FOR
DETENTION

ECF No. 52

On Friday, October 6, 2023, the Court conducted a hearing on the United States' Motion for Detention (ECF No. 52). Defendant was represented by Assistant Federal Defender Juliana Van Wingerden. Assistant United States Attorney Thomas Hanlon represented the United States.

The Court has considered the Petition (ECF No. 49), the information provided to the parties by United States Probation/Pretrial Services, and the arguments of counsel.

1 “[Federal Rule of Criminal Procedure] 32.1(a)(6) governs release pending a
2 hearing on a violation of probation or supervised release.” Fed. R. Crim. P. 46(d).
3 Under that Rule, the Court may release or detain a defendant pursuant to 18 U.S.C.
4 § 3143(a), pending further proceedings. Fed. R. Crim. P. 32.1(a)(6).¹ Under that
5 statute, such a defendant shall be detained unless “the judicial officer finds by clear
6 and convincing evidence that the person is not likely to flee or pose a danger to the
7 safety of any other person or the community if released” 18 U.S.C. §
8 3143(a)(1). If the judicial officer makes such a finding, the defendant shall be
9 released pursuant to 18 U.S.C. § 3142(b) or (c). *Id.* This burden of clear and
10 convincing evidence lies with the defendant. Fed. R. Crim. P. 32.1(a)(6); *see*
11 *United States v. Loya*, 23 F.3d 1529, 1530 (9th Cir. 1994).

12 The United States contended that if released, Defendant would present a risk
13 of flight. Defendant, through counsel, contended there are conditions the Court
14 could impose that would reasonably assure Defendant’s appearance as required.

15 This Court has also taken into account the nature and circumstances of
16

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18 ¹ Had Defendant previously appeared before this Court on alleged violations of supervised
19 release, and had this Court imposed its own conditions of continued release pending
20 revocation, the decision on detention would instead be governed by the provisions of 18
U.S.C. § 3148.

1 conviction,² the weight of the evidence against the Defendant, as well as
2 Defendant's history and characteristics, including character, physical and mental
3 condition, family ties, employment, financial resources, length of residence in the
4 community, community ties, past conduct and history relating to alcohol and drug
5 abuse, and also criminal history, record concerning appearance at court
6 proceedings, whether Defendant was under supervision at the time of the alleged
7 offense, and the nature and seriousness of the danger to the community posed by
8 Defendant's release.

9 The Court notes that Defendant is alleged to have absconded from
10 supervision from September 12, 2023, to the time of his arrest—a period just shy
11 of one month. This period of abscondence presents the Court with a profound
12 concern as to Defendant's risk of flight. This concern is only compounded by the
13 United States Probation/Pretrial Services assertion that state charges for robbery
14 involving Defendant have been referred for prosecution. Based on this record, the
15 Court does not believe Defendant can meet his burden as to clear and convincing
16 evidence that he will not flee. However, the Court is conscious of the fact that
17 there may be underlying substance abuse issues and would hear a motion to reopen

18 ² While 18 U.S.C. § 3143(a)(1) directs the Court to consider release conditions under 18
19 U.S.C. § 3142(c), this statute contemplates an offense charged, which is inapposite in the
20 context of supervised release.

1 detention following proper evaluation and the presentation of an appropriate
2 release plan.

3 Accordingly, **IT IS ORDERED:**

4 1. The United States' Motion for Detention (**ECF No. 52**) is
5 **GRANTED**. Defendant shall be held in detention pending disposition of this case
6 or until further order of the Court.

7 2. Defendant shall be committed to the custody of the Attorney General
8 pending disposition of this case or until further order of the Court. Defendant shall
9 be afforded reasonable opportunity for private consultation with counsel. On order
10 of a court of the United States or on request of an attorney for the United States,
11 the person in charge of the corrections facility in which Defendant is confined shall
12 deliver Defendant to the United States Marshals Service for the purpose of an
13 appearance in connection with a court proceeding.

14 3. Any motion to reopen the issue of detention because of material and
15 newly discovered circumstances shall be a maximum of four-pages in length and
16 shall succinctly state what circumstances are new, how they are established, and
17 the requested change in conditions of release. The motion shall indicate whether
18 opposing counsel; United States Probation/Pretrial Services; or another party with
19 a substantial interest in the motion objects, whether a hearing is desired, and
20 whether a supplemental pretrial services report is requested. If the moving party,

1 after the exercise of due diligence, is unable to determine the position of any party
2 listed above, the moving party may in the alternative document the date; time; and
3 manner of each effort made to determine that party's position and request the Court
4 treat the motion as expedited and submitted without argument. For any motion
5 that includes a plan for substance abuse treatment, Defendant shall attach
6 completed waivers of confidentiality permitting the United States
7 Probation/Pretrial Services Office and the treatment provider to exchange without
8 qualification, in any form and at any time, any and all information or records
9 related to Defendant's conditions of release and supervision, and evaluation,
10 treatment, and performance in the program. **Motions in Yakima and Spokane**
11 **cases shall be heard on the following Wednesday docket, and Richland cases**
12 **shall be heard on the following Thursday docket.** If the Court determines that
13 oral argument is unnecessary on the motion, it shall be set for decision on the
14 Court's 6:30 docket.

15 4. If a party desires that another court review this Order pursuant to 18
16 U.S.C. § 3145, that party shall immediately notify the Magistrate Judge and
17 opposing counsel. LCrR 46(k)(1). The party shall then promptly file a motion for
18 review before the assigned District Judge. LCrR 46(k)(3). If the case has not yet
19 been assigned to a District Judge, or the assigned District Judge is unavailable, the
20 motion shall be noted for hearing before the Chief District Judge. *Id.*

1 5. Defendant is bound over to Judge Stanley A. Bastian for further
2 proceedings.

3 **IT IS SO ORDERED.**

4 DATED October 6, 2023.



A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is positioned above a horizontal line.

ALEXANDER C. EKSTROM
UNITED STATES MAGISTRATE JUDGE